



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF WASSDAHL v. SWEDEN

(Application no. 36619/03)

JUDGMENT

STRASBOURG

6 February 2007

FINAL

23/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wassdahl v. Sweden,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 January 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36619/03) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Swedish national, Mr Lars Wassdahl (“the applicant”), on 8 November 2003.

2. The Swedish Government (“the Government”) were represented by their Agent, Mr M. Falk, Ministry for Foreign Affairs.

3. On 29 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the administrative proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Orsa.

5. On 28 May 1996 the Tax Authority (*skattemyndigheten*) of the County of Kopparberg sent a preliminary consideration (*överbäggande*) to the applicant informing him that it was considering disallowing the deduction he had made for the interest he had paid on debts in the amount of 2,000,000 Swedish kronor (SEK), as well as his declared capital gains for the sale of stocks in the amount of SEK 775,000, that he had made in his tax

return for 1995. Further, it was considering imposing tax surcharges (*skattetillägg*) amounting to SEK 147,000 (approximately 15,800 euros [EUR]), i.e. 40% of the increased tax liability on the sum of SEK 1,225,000.

6. The preliminary consideration was based on an investigation of a company which had done business with a substantial number of private persons. As concerned the applicant, it appeared that he had borrowed SEK 40,000,000 from the company and commissioned it to buy stocks for the same amount on his behalf. The applicant then sold the stocks back to the company at a fixed date, upon which he had made a capital gain. At the same time, he repaid the loan together with interest to the company. As the capital gain corresponded to the interest, they were set off against each other. In the Tax Authority's view, the transactions had in reality never taken place and the applicant had simply received two statements of account and a promissory note in order to use them to obtain tax advantages.

7. The applicant was requested to submit any comments he might have to the Tax Authority by 22 July 1996, which he did. He claimed that the transactions had taken place and that his tax return should be approved.

8. On 27 September 1996 the Tax Authority decided to follow its preliminary consideration. With regard to the imposition of tax surcharges, it found that the applicant had submitted incorrect information about the purported transactions.

9. On 3 January 1997 the applicant appealed against the decision, disputing the Tax Authority's findings. He maintained that there were no grounds for disallowing the deductions or imposing tax surcharges on him.

10. On 30 April 1997 the Tax Authority made its obligatory re-assessment of its decision of 27 September 1996 but upheld it. It then forwarded the appeal to the County Administrative Court (*länsrätten*) of the County of Dalarna.

11. On 29 May 2000 the County Administrative Court rejected the applicant's appeal after having held an oral hearing. It agreed with the Tax Authority's conclusion that no transactions had in reality taken place between the applicant and the company, for which reason they could not be included in his tax return. Moreover, the court found that the applicant had submitted incorrect information to the Tax Authority and that there were no grounds on which to remit the tax surcharges.

12. On 30 June 2000 the applicant appealed to the Administrative Court of Appeal (*kammarrätten*) in Sundsvall, maintaining his claims. On 30 January 2002 he made further submissions to the court, stating *inter alia* that his rights under Article 6 of the Convention had been violated as he had not had access to the same material as the Tax Authority, and since the tax surcharges had been incorrectly imposed on him.

13. By judgment of 15 April 2002 the Administrative Court of Appeal upheld the lower court's judgment in full, without giving any new reasons of its own.

14. On 27 May 2002 the applicant appealed to the Supreme Administrative Court (*Regeringsrätten*), relying on the same grounds as before the lower courts and expanding them further.

15. On 11 September 2003 the Supreme Administrative Court refused leave to appeal.

16. On 25 November 2003 the applicant sued the Swedish State, through the Chancellor of Justice, before the District Court (*tingsrätten*) in Stockholm. He sought SEK 6,850,000 (approximately EUR 736,000) in damages on the grounds that the Tax Authority and the administrative courts had not afforded him a fair procedure, having withheld certain information from him, and that the proceedings had been of excessive length. He invoked national legislation as well as the Convention and its case-law.

17. The State contested the suit, claiming that it had not caused the applicant any injury, either by fault or neglect, for which he could claim damages.

18. In a judgment of 21 December 2004, the District Court rejected the applicant's claims. As concerned the length of the proceedings, the court considered that the administrative courts' examination of his tax case had not taken so long as to incur the State's liability for damages.

19. On 27 December 2004 the applicant appealed to the Svea Court of Appeal (*hovrätten*), maintaining his claims.

20. On 2 November 2005 the Court of Appeal upheld the lower court's judgment in full. With regard to the complaint about the length of the proceedings, the court, without giving any reasons, found that the tax proceedings could not be considered to have been of excessive duration.

21. On 12 October 2005 the applicant appealed to the Supreme Court (*Högsta domstolen*) where the case is still pending, awaiting a decision on leave to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained that the length of the administrative proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

23. The period to be taken into consideration began on 28 May 1996 and ended on 11 September 2003. It thus lasted over seven years and three months for one administrative and three judicial levels of jurisdiction.

A. Admissibility

24. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him since he had not awaited the final outcome of the national compensation proceedings against the Swedish State before introducing the complaint before the Court. They relied on a judgment of the Supreme Court, pronounced on 9 June 2005, where the plaintiff had been granted compensation for both pecuniary and non-pecuniary damage because of a breach of the “reasonable time” requirement of Article 6 § 1 of the Convention in a criminal case. Thus, according to the Government, there was an effective remedy available to the applicant which he should have been obliged to exhaust before complaining to the Court. In any event, they claimed that he should now be required to await the final outcome of the national compensation proceedings before his application was dealt with by the Court.

25. The Court first observes that the judgment of the Supreme Court referred to by the Government was pronounced on 9 June 2005, i.e. almost one year and seven months after the applicant lodged the present application with the Court. Thus, at the time of introduction of the present application to the Court, there were no indications that there existed an effective remedy in Sweden for complaints relating to the length of proceedings. The Court therefore considers that the applicant had exhausted the domestic remedies available to him at the time when he complained to the Court.

26. However, since the applicant in any event instituted compensation proceedings against the State and these are still pending before the Supreme Court, the question arises whether the outcome of these proceedings should be awaited before the Court deals with the applicant’s complaint.

27. In this respect, the Court notes that the case referred to by the Government concerned criminal proceedings, where the complainant had been acquitted of the charges against him, whereas the present case relates to administrative proceedings, involving tax surcharges, for which there does not yet exist any guiding judgment from the Supreme Court. Moreover, both the District Court and the Court of Appeal rejected the complaint about the length of the proceedings before the administrative courts without giving any reasons, but simply stating that they did not find the proceedings to have been of excessive length. Here, the Court observes that the Court of Appeal’s judgment was adopted in November 2005, i.e. after the Supreme Court’s judgment referred to by the Government, but without making any reference to it. Lastly, the Court notes that the compensation proceedings have already been pending for more than a year

before the Supreme Court, awaiting its decision on whether to grant leave to appeal.

28. Having regard to the above, the Court considers that, for the purposes of the present case, the Government have not shown that the pending compensation proceedings in Sweden can be considered to be an effective remedy for the applicant, and it would thus be unreasonable to prolong the proceedings before the Court even further. It follows that the Government's objection must be dismissed.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The Government left it to the Court to decide whether, on the merits, the complaint revealed a violation of the Convention.

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

32. The Court considers that the present case did not concern matters of particular complexity and that the applicant was not responsible for any significant delays. On the contrary, it is of the opinion that there were prolonged periods of inactivity, in particular before the County Administrative Court, which were attributable to the national courts, and that their handling of the case did not promote its timely completion. In this respect, the Court observes that a significant amount of money (approximately SEK 147,000 in tax surcharges) was at stake for the applicant.

33. Thus, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings of which complaint is made was, overall, excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

35. The applicant claimed SEK 1,900,276 (approximately EUR 210,000) in respect of pecuniary damage and SEK 4,500,000 (approximately EUR 497,000) in respect of non-pecuniary damage.

36. The Government contested these claims.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained some non-pecuniary damage because of the excessive length of the national proceedings. Ruling on an equitable basis, it awards him EUR 1,500 under that head.

B. Costs and expenses

38. The applicant also claimed SEK 35,000 (approximately EUR 3,900) for the costs and expenses incurred before the domestic courts and left it for the Court to assess a fair reimbursement for his costs incurred before the Court, stressing that he had spent many hours of his own time preparing his case since he had not been represented by a lawyer.

39. The Government contested the claim.

40. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and finds it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 for costs and expenses incurred before the Court.

C. Default interest

41. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Swedish kronor at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President